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UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Ola OLOFSSON

Group Art Unit: 3679

Serial No.: 10/754,564

Examiner: V. MacArthur

Filed: January 12, 2004

Confirmation No. 8328

For: GUIDING MEANS AT A JOINT

COMMUNICATION

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants, now Appellants, are in receipt of a Notice of Non-Compliant Amendment of May 30, 2006 ("the Notice"). The Notice objects to the Appeal Brief filed April 21, 2006 ("the Brief") and indicates an amended brief is required to correct formal matters.

Having reviewed the appropriate sections of the most recent versions of the MPEP and CFR, Appellants respectfully submit that the Examiner and his Supervisor are without authority to reject the Brief for many of the reasons presented therein. The following are examples of unsupported rejections of the Brief.

The Notice states, "The Grounds of Rejection to Be Reviewed on Appeal" section should not be titled "Issues to be reviewed on appeal." While the MPEP and CFR requires particular sections, neither the CFR nor MPEP dictate the specific language to be used as the headings for those sections.

The Brief was also rejected because explanation of the subject matter of some of independent claims refers to previously discussed independent claims. Although the Notice states "The reference to previous discussions of other claims is not acceptable," Appellants can find no such imperative in either the MPEP or CFR.

The Notice asserts the Argument section does not have a heading for one of the grounds of rejection. While each rejection is discussed in the Brief under a different heading, the Notice requires the headings to have particular language. Again, such a requirement is not part of the MPEP and CFR.

Finally, the Notice rejects the Brief because the Claims Appendix includes both status indicators and lists cancelled claims. As is discussed at MPEP § 1205.02, the copy of the claims was a clean copy, not including any markings such as brackets or underlining. Appellants can find no support for the statement that "The Claims Appendix is not to include either claim status claim status and must only contain appealed claims," as asserted in the Notice.

However, in the interests of advancing prosecution and avoiding any additional unnecessary delays which would further prejudice the Appellants, the concurrently filed Substitute Brief complies with the unsupported requirements as stated in the Notice.

Respectfully submitted,



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Date: June 8, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences



In re the Application of

Ola OLOFSSON et al.

Serial No.: 10/754,564

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For: GUIDING MEANS AT A JOINT

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SUBSTITUTE APPEAL BRIEF

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Date: June 8, 2006



I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the inventors' interest, Pergo (Europe) AB, a company of Sweden, having a principal address of Strandridaregatan 8, S-231 25 Trelleborg, Sweden.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to Appellants, Appellants' legal representative or the assignee, which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

This is an appeal of the final rejection of claims 14, 15 and 17-23 which stand finally rejected. Claims 1-13 and 16 have been cancelled without prejudice or disclaimer.

IV. STATUS OF AMENDMENTS

An Amendment After Final Rejection was filed January 19, 2006. However the Amendment After Final did not amend the claims. The Action dated March 2, 2006, indicates the amendment to the specification was entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 14, 15, 17, 18 and 23 are independent claims.

Claims 14, 15 and 17 share some common subject matter.

Independent Claim 14

Independent claim 14 is directed to a joint formed at a junction between adjacent boards where the joint comprises a first board comprising an upper surface, a lower surface and a groove, (1) Fig. 1; and a second board joined to the first board comprising an upper surface, a lower surface and a tongue, (2) Fig. 2; the second upper surface of said first board and said upper

surface of said second board abutting each other (See, e.g., Fig. 2), a first equalizing cavity, (4') Fig. 2; located adjacent to an upper end of a proximal end of the tongue (2) below said abutting surfaces; a distal end of the tongue being smaller than the proximal end of the groove (relationship being generally shown in Fig. 2), a second equalizing cavity (4, Fig. 2) formed by a gap between the proximal end of the groove and the distal end of the tongue (2) Fig. 2; further comprising glue disposed in at least one of the first equalizing cavity and the second equalizing cavity. Specification, page 2, lines 14-21.

Independent Claim 15

Independent claim 15 is similar to claim 14, with claim 15 being directed to a joint formed at a junction between adjacent boards where the joint comprises a first board comprising an upper surface, a lower surface and a groove, (1) Fig. 1; and a second board joined to the first board comprising an upper surface, a lower surface and a tongue, (2) Fig. 2; the second upper surface of said first board and said upper surface of said second board abutting each other (See, e.g., Fig. 2), a first equalizing cavity, (4') Fig. 2; located adjacent to an upper end of a proximal end of the tongue (2) below said abutting surfaces; a distal end of the tongue being smaller than the proximal end of the groove (relationship being generally shown in Fig. 2), a second equalizing cavity (4, Fig. 2) formed by a gap between the proximal end of the groove and the distal end of the tongue (2) Fig. 2; further comprising glue disposed in at least one of the first equalizing cavity and the second equalizing cavity. Specification, page 2, lines 14-21.

Claim 15 additionally includes the additional limitation (not found in claim 14) such that "at least one of the first equalizing cavity and the second equalizing cavity extends to the lower surface of the second board," e.g., See, Fig. 7. Also, see the specification at page 5, lines 18-25.

Independent Claim 17

Independent claim 17 is similar to independent claim 14, with claim 17 being directed to a joint formed at a junction between adjacent boards where the joint comprises a first board comprising an upper surface, a lower surface and a groove, (1) Fig. 1; and a second board joined

to the first board comprising an upper surface, a lower surface and a tongue, (2) Fig. 2; the second upper surface of said first board and said upper surface of said second board abutting each other (See, e.g., Fig. 2), a first equalizing cavity, (4') Fig. 2; located adjacent to an upper end of a proximal end of the tongue (2) below said abutting surfaces; a distal end of the tongue being smaller than the proximal end of the groove (relationship being generally shown in Fig. 2), a second equalizing cavity (4, Fig. 2) formed by a gap between the proximal end of the groove and the distal end of the tongue (2) Fig. 2; further comprising glue disposed in at least one of the first equalizing cavity and the second equalizing cavity. Specification, page 2, lines 14-21.

Claim 17 additionally includes the limitation (not found in claim 14) that the tongue comprises at least one guiding wedge on an upper surface or a lower surface thereof (elements 3 in Fig. 3 or Fig. 5) “whereby the at least one guiding wedge contacts an inner surface of the groove” (contact clearly shown in Figs. 2, 6, 7 and 8, as well as described in the specification at page 4, lines 1-17).

Independent Claim 18

Independent claim 18 is directed to a joint formed at a junction between adjacent boards, wherein the joint comprises “a first board, comprising an upper surface, a lower surface and a groove” (Fig. 7); “a second board joined to the first board and comprising an upper surface, a lower surface and tongue (Fig. 7); said upper surface of said first board and said upper surface of said second board abutting each other” as shown in Fig. 7. “Said first board and said second board defining a gap therebetween (4', Fig. 7) and a hole (7, Fig. 7), in fluid communication with said gap, said hole having an opening below said groove as shown in Fig. 7 (opening to the bottom of the board below said groove).

Independent claim 23

Independent claim 23 is directed to a method for assembling floor boards to form a joint therebetween, the method comprising providing “a first board, said first board comprising an upper surface, a lower surface and a groove (Fig. 1),” “a second board joined to the first board

and comprising an upper surface, a lower surface and a tongue (Figs. 2, 4, 6-8)” and “glue disposed on at least one of said tongue and said groove (Fig. 7, Specification, page 2, lines 14-21), “mating said groove of said first board with said tongue of said second board” (Fig. 7) and “directing said glue away from said upper surface and toward the lower surface of said boards (Fig. 7).”

VI. Grounds of Rejection to be Reviewed on Appeal

Whether claims 14, 15 and 17-23 under 35 U.S.C. §103(a) are unpatentable over Parisin (U.S. Patent 5,165,816), in view of Finkell (U.S. Patent 5,797,237), and whether claim 18 fails to comply with the written description requirement, under 35 U.S.C. §112, first paragraph.

VII. ARGUMENT

A. Claims 14, 15 and 17-23 under 35 U.S.C. §103(a) as allegedly being unpatentable over Parisin, in view of Finkell

1. Claims 14, 15 and 17

As noted above, independent claims 14, 15 and 17 share some common subject matter. Thus, they will naturally be treated together, but then Claims 15 and 17 will be separately treated.

In the Final Rejection, the Examiner repeats or paraphrases the language of claims 14, 15 and 17 and purportedly attributes such language to the teachings of Parisin. However, there is clearly no disclosure in Parisin for the following features.

The Examiner states that “Parasin discloses . . . a first equalizing cavity (upper 46) located adjacent to an upper end of a proximal end (24) of the tongue below the upper surface. However, as clearly shown in drawing Fig. 2 of Parisin, (upper 46) is not located below the upper surface of abutting boards at an upper end of a proximal end of the tongue but, rather, is a space or void separating the upper surfaces of the boards such that they cannot abut. Thus, the teaching of Parisin is to create a gap between the upper surface of each of the boards 10 and 11. The Office Action continues “wherein a distal end (16) of the tongue is smaller than a proximal end 32.” However, again, as clearly shown in Parisin, the distal end of the tongue is 18, not 16,

as cited in the Office Action. Groove 14 has a base 34 which is designed to, and is clearly in contact with distal end 18 of the tongue 12 as stated by patentee at column 3, lines 28-32, "in addition, tongue 12 is perfectly longer than groove 14 is deep such that when tongue 18 engages with base 34 . . ." as shown in Fig. 2. The Examiner continues "a second equalizing cavity (bottom 42) formed by a gap between the proximal end 32 of the groove and the distal end of the tongue and further comprising glue (column 3, lines 15-20) disclosed in at least one of the first equalizing cavity and the second equalizing cavity" are not supported by the teachings of Parasin. Although applicants concede that Parasin may include glue within his joint (column 3, lines 16-17), there is no teaching that "bottom 42" is a gap formed between the proximal end of the groove and distal end of the tongue and, therefore, even if it were to accept excess glue, it is not the second "equalizing cavity" claimed by appellants which they define as formed by a gap between the proximal end of the groove and the distal end of the tongue. To the contrary, patentee specifically makes it clear that there is no gap between the base of the groove and the tip of the tongue, but, rather, that they were intended to engage each other so as to prevent the upper surface of the first board and the upper surface of the second board from abutting each other as claimed, e.g., independent claims 14, 15 and 17.

Thus, the alleged teachings of the claimed limitations that were supposedly found in Parasin is only created by the Examiner's paraphrases of the claims and naked allegations that such claim limitations are attributable to the teachings of Parasin.

It is also noted that the Examiner recognizes that Parasin does not disclose that the upper surfaces of the first and second panels abut. For this lack of teaching, applicants propose to combine Parasin with Finkell.

However, the proposed combination of Parasin with Finkell is clearly without any motivation that would impel one skilled in the art to do what the Examiner suggests and without destroying the relevant teachings of the references. As noted hereinabove, Parasin expressly teaches that his tongue is longer than the groove by the language "tongue 12 is perfectly longer than groove 14 is deep such that one tongue tip 18 engages groove base 34 . . ." (Column 3, lines 28-32 and Fig. 2). Thus, one skilled in the art, faced with the claim limitations, must either

disregard this teaching of Parasin and, hence, the resulting spaces 46 (Fig. 2) which are formed as a result of such relationship would be eliminated by reducing the tongue length so as to bring the panels 10 and 11 of Parasin closer together until they abut, also thereby eliminating both spaces 42 and 46 in Parasin. Such a proposal is an anathema to the teachings of Parasin and it is an attempt to duplicate the claimed invention only by hindsight reconstruction and contrary to the relevant teachings of the references. For the foregoing the proposed combination of Parasin and Finkell cannot possibly establish a *prima facie* case of obviousness for any of independent claims 14, 15 and 17.

2. Claim 15

Claim 15 contains the additional limitation that “at least one of the first equalizing cavity and the second equalizing cavity extends to the lower surface of the second board,” i.e., the second board contains the tongue. The Examiner make no argument that the first equalizing cavity (created beneath the abutting surfaces) extends to the lower surface of the board. Rather, the Examiner argues that “lower 42 meets the lower surface of 11 of the second board.” However, lower 42 does not extend to the lower surface of board 11. The Examiner has already defined “lower 42” as being the “second equalizing cavity” which, at best, terminates at “44” “spaces to accommodate panel expansion and contraction.” Parasin, column 3, lines 24-26. Thus, notwithstanding that lower 42 is not formed between a proximal end of the groove and a distal end of the tongue, there can be no “extension to the lower surface of the (second) board.”

3. Claim 17

Claim 17 adds the additional limitation of “guiding wedges” (3, Figs. 1, 3, 5). The final rejection states “the tongue comprises at least one guiding wedge (top 17 and bottom 17)” However, Parasin is devoid of any suggestion that 17 is a guiding wedge. To the contrary, Parasin expressly teaches “[T]ongue 12 and groove 14 have adjacent chamfered lead surfaces 17 and 33” (column 2, lines 57-58).

Parasin continues (column 2, lines 59-62) “[T]he chamfered surfaces of tongue 12 are disposed at a more acute angle than the chamfered surfaces of groove 14 to leave spaces therebetween in an assembled joint” (emphasis added). Thus, according to Parasin, rather than acting as guiding wedges top 17 and bottom 17 do not even contact the groove 14, but, rather, only create spaces between the respective surfaces.

4. Claims 18 and 23

Furthermore, each of independent claims 18 and 23 provide further limitations not found, nor taught, in either Parasin or Finkell nor made obvious by the proposed combination.

For example, in independent claim 18, appellants state that, in addition to the defined gap between the first board and the second board, there is also “a hole, in fluid communication with said gap, said hole having an opening below said groove.” This is clearly shown in appellants’ original drawings, e.g., Fig. 7 and 8, which hole 7, being in fluid communication with gap 4’, has an opening below the groove as shown in the drawings. The proposed combination of Parasin and Finkell cannot teach or suggest such a limitation.

Again, in this regard, the Examiner acknowledges that “Parasin does not disclose that the upper surfaces abut. Finkell teaches (Fig. 2 and column 4, lines 35-36) that upper surfaces of floorboards should abut.” However, contrary to the position taken with regard to claims 14, 15 and 17, the Examiner apparently abandons “lower 42” as the gap, but now defines “the gap” as “lower gap between boards 10 and 11.” If the Examiner is now referring to “lower 46,” i.e., the gap between boards 10 and 11 as being the “second equalizing cavity,” where is the structure which teaches “a hole in fluid communication with said gap, said hole having an opening below said groove.” The feature 46 cannot be both the “gap” and the “hole” in fluid communication with the gap. The deficiency in this proposed combination is addressed in connection with claims 14, 15 and 17 above, herein incorporated by reference. Thus, the stated rejection makes no mention of the hole being in fluid communication with the gap with the hole opening below the groove as recited in claim 18. Although the Examiner makes reference to “a hole (bottom 46) in fluid communication (column 3, lines 15-20) with the gap . . .,” there clearly is no gap

between the distal end of the tongue and the proximal section of the groove as independently claimed. See, the discussion above with regard to this feature in claims 14-15 and 17.

Furthermore, although the Examiner has alleged that “it is further readily apparent that gaps between adjacent floor boards would catch/trap dirt, making such flooring harder to clean, which is undesirable, one were to modify the tongue, groove dimensions of Parasin so as to bring the upper surface of panels 10 and 11 into contact as stated by the proposed teachings of Finkell, thereby eliminating upper space 46 such would also eliminate lower space 46, thus, further removing the proposed combination of references away from the claimed invention.

5. Claim 23

With regard to independent claim 23, claim 23 specifically recites that “mating said groove of said first board with said tongue of said second board; and directing said glue away from said upper surface and towards the lower surface of said board,” which are limitations not found in the proposed combination of Parasin and Finkell. Attention is again directed to Parasin, column 3, lines 16, *et seq.*, in which patentee states “when assembling joints, glue may be applied to the tongue and groove profiles, the application of glue is optional. The spaces 42 between the tongue head and the groove head chamfered surfaces define a gap to accommodate excess glue.” There is no disclosure in Parasin alone or in combination with Finkell which would lead one of ordinary skill in the art to direct the glue “away from said upper surface and towards the lower surface of said boards” as recited in the independent claim 23.

6. Dependent Claim 19

In addition, dependent claim 19 further limits independent claim 18 by requiring that “said hole extends from said joint towards the proximal section of said first or second boards.” To the extent that the Examiner wishes 46 (upper or lower) to define a gap between the first and second board when the upper surface of the first and second board abut each other then such hole would not extend toward a proximal section of the first or second board.

7. Dependant Claim 20

Similarly, dependent claim 20, also dependent on claim 18, requires that the hole extends towards the lower surface of said first or second board. To the extent that gap 46 (upper) of Parasin is eliminated according to the teachings of Finkell then there would be no hole extending toward the lower surface of the first or second board.

8. Dependent Claims 21 and 22

The limitations of dependent claims 21 and 22 are wholly lacking in the proposed combination of Parasin in view of Finkell.

9. Dependent Claim 21

Dependent claim 21 requires that the hole be a vent in one of the boards, which clearly is lacking in the proposed combination where, at best, the gap is a space formed between the boards, not “through one of said boards” as recited in claim 21.

10. Dependent Claim 22

As to claim 22, which further limits claim 21, the vent is stated to have “the terminal end at the lower surface of said board” and lacking any vent through one of the boards it would not be obvious to further modify that missing feature so as to have the vent through one of the boards have a terminal end at the lower surface of said board, as recited.

For the foregoing reasons, applicants respectfully submit that the stated rejection of the claims as obvious under 35 U.S.C. §103(a) over Parasin in view of Finkell does not establish a *prima facie* case of obviousness and reversal of all prior art rejections is respectfully requested.

- B. Claim 18 stands rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement.

The Board is respectfully directed to consider the Examiner's approach to rejecting claim 18 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement of the first paragraph thereof.

The entire thrust of the Examiner's rejection (as set forth in the Final Rejection in the last three lines thereof) the statement "note that holes (7) are not located below grooves (1) as originally presented. Rather they are located to the right of grooves (1) as seen in Fig. 7." Applicants repeat this quote from the Examiner insofar to show the Board that such quote is not the claimed invention. Rather, it is not the position of the hole that is being claimed but, rather, the limitation that "said hole having an opening below said groove," which is clearly shown in Figs. 7 and 8 as originally filed. As clearly specified in original claims 11 and 12 and as described in the specification at page 5, third full paragraph, the openings of holes 7 release the hydraulic pressure of the glue from the equalizing cavity to the lower portions of the joint or, alternatively, at the lower side of the board.

Either of these embodiments are clearly "below the groove" as shown in the drawings and appellants submit that the Examiner's attempt to recast the invention by using paraphrased limitations not included in the claims and then attempting to allege that such non-claimed limitations are not supported by the specification as originally filed is improper.

The Examiner's rationale smacks of the attitude firmly denounced by the Court of Customs and Patent Appeals in In re Borkowski, 164 USPQ 642 (1970).

While the Examiner would like to redefine applicants' language to state "hole (7) with an opening below only a solid non-groove portion of the board," is suggested, such alternative language would elevate the Examiner to the lexicographer of the patent application rather than that such be left to applicants. As the Court stated in In re Borkowski, *supra*, at 645:

“the Examiner’s approach to determining whether appellant’s claims satisfy the requirements of Section 112 appears to have been to study appellant’s disclosure, to formulate a conclusion as to what he (the examiner) regarded the broadest invention supported by the disclosure, and then to determine whether appellant’s claims are broader than the Examiner’s conception of what ‘the invention is’.”

We cannot agree that Section 112 permits of such an approach to claims.

Thus, it is clear that the CCPA (whose decisions are binding on the Federal Circuit), long ago determined that it is the applicant (not the Examiner) who should draft the language to describe the invention. Applicants’ Figs. 7 and 8 clearly show hole 7 having an opening “below said groove.” Whether the Examiner takes issue as to whether the opening is “directly below” or “below the lowest level of the plane running coordinate with the lower surface of the groove” or “below only a solid non-groove portion of the board” or, alternatively, other words to describe the invention depicted in Figs. 7 and 8, is simply inappropriate. The choice of such language is not left to the discretion of the Examiner but, rather, to that of applicants and applicants have chosen language that describes Figs. 7 and 8. As Figs. 7 and 8 are part of the original disclosure, the limitations drafted to claim what is depicted in the drawings do not introduce new matter into the application. It is further noted that the Examiner has not objected to claim 22 (dependent on claim 18) on the basis of 35 U.S.C. §112, where it is clear that therein it is stated that “said vent has a terminal end at said lower surface of said board,” which is clearly below the groove as illustrated in Figs. 7 and 8. Accordingly, it appears that the Examiner’s singling out of claim 18 is only because the Examiner seeks to define the invention in terms other than that used by appellants and then to determine that such sought after terms are not supported by the specification as originally filed. Based on the foregoing authority, reversal of the rejection is respectfully requested.

VIII. CONCLUSION

Reversal of each of the grounds of rejection as to each of claims 14, 15, and 17-23 for the reasons set forth above are respectfully above.

Respectfully submitted,



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Date: June 8, 2006

VIII. CLAIMS APPENDIX

14. A joint formed at a junction between adjacent boards, the joint comprising:

- a first board, comprising an upper surface, a lower surface and a groove;
- a second board joined to the first board, and comprising an upper surface, a lower surface and a tongue, said upper surface of said first board and said upper surface of said second board abutting each other;
- a first equalizing cavity located adjacent to an upper end of a proximal end of the tongue below said abutting surfaces;
- wherein a distal end of the tongue is smaller than a proximal end of the groove;
- a second equalizing cavity, formed by a gap between the proximal end of the groove and the distal end of the tongue; and

further comprising glue disposed in at least one of the first equalizing cavity and the second equalizing cavity.

15. A joint formed at a junction between adjacent boards, the joint comprising:

- a first board, comprising an upper surface, a lower surface and a groove;
- a second board joined to the first board, and comprising an upper surface, a lower surface and a tongue, said upper surface of said first board and said upper surface of said second board abutting each other;
- a first equalizing cavity located adjacent to an upper end of a proximal end of the tongue below said abutting surfaces;

wherein a distal end of the tongue is smaller than a proximal end of the groove;

a second equalizing cavity, formed by a gap between the proximal end of the groove and the distal end of the tongue, wherein at least one of the first equalizing cavity and the second equalizing cavity extends to the lower surface of the second board.

17. A joint formed at a junction between adjacent boards, the joint comprising:

a first board, comprising an upper surface, a lower surface and a groove;

a second board joined to the first board, and comprising an upper surface, a lower surface and a tongue, said upper surface of said first board and said upper surface of said second board abutting each other;

a first equalizing cavity located adjacent to an upper end of a proximal end of the tongue below said abutting surfaces;

wherein a distal end of the tongue is smaller than a proximal end of the groove;

a second equalizing cavity, formed by a gap between the proximal end of the groove and the distal end of the tongue, wherein the tongue comprises at least one guiding wedge on an upper surface or a lower surface thereof, whereby the at least one guiding wedge contacts an inner surface of the groove.

18. A joint formed at a junction between adjacent boards, the joint comprising:

a first board, comprising an upper surface, a lower surface and a groove;

a second board joined to the first board, and comprising an upper surface, a lower surface, and a tongue, said upper surface of said first board and said upper surface of said second board abutting each other; and

said first board and said second board defining a gap therebetween; and

a hole, in fluid communication with said gap, said hole having an opening below said groove.

19. The joint of claim 18, wherein said hole extends from said joint towards a proximal section of said first or second boards.

20. The joint of claim 18, wherein said hole extends towards said lower surface of said first or second board.

21. The joint of claim 18, wherein said hole is a vent through one of said boards.

22. The joint of claim 21, wherein said vent has a terminal end at said lower surface of said board.

23. A method for assembling floor boards to form a joint therebetween, the method comprising:

providing:

a first board, said first board comprising an upper surface, a lower surface and a groove;

a second board joined to the first board, and comprising an upper surface, a lower surface, and a tongue; and

glue, disposed on at least one of said tongue and said groove;

mating said groove of said first board with said tongue of said second board; and

directing said glue away from said upper surface and towards the lower surface of said boards.

IX. EVIDENCE APPENDIX

NONE

X. RELATED PROCEEDINGS INDEX

NONE